

3/10/00

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Regulatory Analysis Form		This space for use by IRRC 2000 MAY 9 AM 11:13 INDEPENDENT REGULATORY REVIEW COMMISSION IRRC Number: 2113
(1) Agency Revenue		
(2) I.D. Number (Governor's Office Use) 15-413		
(3) Short Title Termination Pay, Severance Pay and Early Retirement Incentive Programs		
(4) PA Code Cite 61 Pa. Code §§ 101.1 and 101.6	(5) Agency Contacts & Telephone Numbers Primary Contact: Anita M. Doucette (717) 787-1382 Secondary Contact: Douglas A. Berguson (717) 787-1382	
(6) Type of Rulemaking (check one) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. This regulatory change will clarify the taxation of termination pay, severance pay, early retirement incentive programs and programs offered by employers to provide benefits to employees in addition to those in qualifying retirement plans upon separation from service. The regulation also interprets 72 P.S. § 7301(d) to mean that Federal insurance benefits paid under the Railroad Retirement Act and guaranteed payments to a partner of a partnership for services to the partnership are excluded from compensation.		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. Statutory authority for the regulation is contained in section 354 of the TRC (72 P.S. § 7354).		

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is not mandated by Federal or state law, court order or Federal regulations.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

This regulation clarifies the taxation of termination pay, severance pay, early retirement incentive programs and programs offered by employers to provide benefits to employees in addition to those in qualifying retirement plans upon separation from service. It also interprets 72 P.S. § 7301(d) to mean that Federal insurance benefits paid under the Railroad Retirement Act and guaranteed payments to a partner of a partnership for services to the partnership are excluded from compensation.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environmental or general welfare risks associated with nonregulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Taxpayers and tax practitioners will benefit from having regulatory guidance regarding the taxation of termination pay, severance pay, early retirement incentive programs, Federal insurance benefits paid under the Railroad Retirement Act and guaranteed payments to a partner of a partnership for services to the partnership.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No parties should be adversely affected by the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All employers with early-out incentive programs and employees receiving severance pay will be required to comply with the regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

A copy of the regulation was forwarded to the Pennsylvania Bar Association; the Pennsylvania Institute of Certified Public Accountants and the Pennsylvania Chamber of Business and Industry. The regulation will also be listed in the Department's next Agenda of Regulations and will be forwarded to interested parties upon request.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

N/A

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

This regulation does not increase costs or savings to local governments. No legal, accounting or consultant procedures are required by the regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

This regulation does not increase costs or savings to state government. No legal, accounting or consultant procedures are required by the regulation.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A					
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A					
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A					

(20a) Explain how the cost estimates listed above were derived.

The regulation will facilitate compliance and is in accordance with current Departmental policy. There are no fiscal savings or costs associated with the regulation.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There are no adverse effects or costs associated with the regulation.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There are no nonregulatory alternatives associated with the regulation.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

There are no alternative regulatory schemes associated with the regulation.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no provisions that are more stringent than federal standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Other states tax termination pay, severance pay, early retirement incentive programs and programs offered by employers to provide benefits to employees in addition to those in qualifying retirement plans upon separation from compensation. This regulation will no put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation does not affect any other existing or proposed regulation of the Department or any other state agency. The numbering of § 101.6(c)(9) will change upon the Department's adoption of Regulation 15-402, relating to payments for employee welfare benefit plans and cafeteria plans and the promulgation of a proposal relating to supplemental unemployment benefit plans. The lettering of § 101.6(e) will change upon the Department's adoption of Regulation 15-402.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The regulation will be presented to the House and Senate Finance Committees and the Independent Regulatory Review Commission. The Committees may hold public hearings or informational meetings to consider the regulation. The date, time and location of such hearings or meetings can be ascertained by contacting the Committees. The Commission may hold informational meetings to consider the regulation. The date, time and location of such meetings can be ascertained by contacting the Commission.

At the same time the regulation is presented to the Committees and the Commission, the regulation will be published in the Pennsylvania Bulletin and the public will be invited to comment.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

This regulation does not change existing reporting, record keeping or other paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special groups are affected by the regulation.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

This regulation will be effective upon final publication in the Pennsylvania Bulletin. Compliance with the regulation is required upon publication. There are no permits, licenses or other approvals required by this regulation.

(31) Provide the schedule for continual review of the regulation.

This regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

RECEIVED

2000 MAY -3 AM 11:13

LEGISLATIVE REGULATORY
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

3/10/00
Copy below is hereby approved as to
form and legality. Attorney General
By: [Signature]
(DEPUTY ATTORNEY GENERAL)
APR 12 2000
DATE OF APPROVAL
 Check if applicable
Copy not approved. Objections
attached.

2113
Copy below is hereby certified to be true and correct copy
of a document issued, prescribed or promulgated by:
PA Department of Revenue
(Agency)
Document/Fiscal Note No. 15-413
Date of Adoption: _____
By: [Signature]
Robert A. Judge, Sr.
Secretary of Revenue
Title: _____
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to
form and legality. Executive or Independent
Agencies.
By: [Signature]
3/20/00
Date of Approval
(Deputy General Counsel)
(~~Chief Counsel, Independent Agency~~)
(Strike inapplicable title)
 Check if applicable. No Attorney
General approval or objection
within 30 days after submission

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

61 Pa. Code §§ 101.1 and 101.6

Personal Income Tax

Termination Pay, Severance Pay and
Early Retirement Incentive Programs

PREAMBLE

The Department of Revenue (Department), under authority contained in section 354 of the Tax Reform Code of 1971 (TRC) (72 P.S. § 7354), proposes an amendment to 61 Pa. Code Chapter 101. General Provisions, sections 101.1 and 101.6, (relating to definitions and compensation) to read as set forth in Annex A.

Purpose of Regulation

This regulatory change will clarify the taxation of termination pay, severance pay, early retirement incentive programs and programs offered by employers to provide benefits to employees in addition to those in qualifying retirement plans upon separation from service.

The regulation also interprets 72 P.S. § 7301(d) to mean that Federal insurance benefits paid under the Railroad Retirement Act and guaranteed payments to a partner of a partnership for services to the partnership are excluded from compensation.

Explanation of Regulatory Requirements

Section 101.1 (relating to definitions) is amended by adding the definitions of limited plan of termination, qualified annuity and severance pay for use in the regulation. Section 101.6(a) is amended by updating the list of examples of compensation. Section 101.6(c)(3) was amended to reflect the Department's interpretation of the Pennsylvania Income Tax law with regard to Federal insurance benefits paid under the Railroad Retirement Act. Text from § 101.6(a) has been deleted and moved to a new paragraph (9) in § 101.6(c). Paragraph (9) reflects the Department's interpretation of the Pennsylvania Income Tax law with regard to guaranteed payments to a partner of a partnership for services to the partnership. The numbering of this new paragraph will change upon the Department's adoption of Regulation 15-402, relating to payments for employee welfare benefit plans and cafeteria plans and the promulgation of a proposal relating to supplemental unemployment benefit plans.

Finally, a new subsection (e) has been added to § 101.6 to explain superannuation requirements and the voluntary discontinuance of a plan. The lettering of this new subsection will change upon the Department's adoption of Regulation 15-402.

Affected Parties

This regulation could affect all employers with early-out incentive programs and employees receiving severance pay.

Fiscal Impact

The Department has determined that the proposed amendment will have no fiscal impact on the Commonwealth.

Paperwork

The proposed amendment will not require additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The regulation will become effective upon final publication in the Pennsylvania Bulletin. The regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing any comments, suggestions, or objections regarding the proposed amendment to Anita M. Doucette, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, Pennsylvania 17128-1061, within thirty (30) days after the date of the publication of this notice in the Pennsylvania Bulletin.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on *May 3, 2000* the Department submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the amendments, by the Department, the General Assembly and the Governor.

ROBERT A. JUDGE, SR.
SECRETARY OF REVENUE

01/12/00

CONTINUATION SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

ANNEX A

Title 61. Revenue, Part I. Department of Revenue, Subpart B.
General Fund Revenues, Article V. Personal Income Tax, Chapter
101. General Provisions.

§ 101.1. Definitions.

The following words and terms, when used in this article,
shall have the following meanings, unless the context clearly
indicates otherwise:

* * *

Limited plan of termination - A plan that has one or more of
the following attributes:

(i) The plan, when begun, is scheduled to be complete on a
certain date or upon the occurrence of one or more specified
events.

(ii) The number, percentage or class of employes whose
services are to be terminated are specified in advance.

(iii) The plan is otherwise temporary or limited.

* * *

Qualified annuity - An arrangement under which the payee is
entitled to equal, or substantially equal, periodic payments,
paid not less frequently than annually, for:

(i) The life of the participant, or, if applicable, the joint lives of the recipient and recipient's designated beneficiary.

(ii) The life expectancy of the participant, or, if applicable, the joint life expectancies of the recipient and recipient's designated beneficiary.

(iii) A period of not less than 10 years.

* * *

Severance pay - A payment made upon separation from employment pursuant to:

(i) Any plan which has both of the following attributes:

(A) Payments are not contingent solely upon an employe's retirement from service or being the same age as, or older than, the earliest retirement age under a qualifying retirement benefit plan or qualifying retirement income plan sponsored by the employer.

(B) Total payments cannot exceed twice the employe's annual compensation during the year preceding the employe's termination.

(ii) Any plan under which all payments to any plan participant are completed within 120 months of the participant's termination.

(iii) Any plan under which no benefit is payable to, or subject in any manner to anticipation, assignment or pledge by,

an employee except upon voluntary separation from the employment of the employer before the participant reaches normal retirement age or service.

(iv) Any plan, including a stock bonus or profit-sharing plan formed by a trust that meets the requirements for qualification described in section 401 of the IRC (26 U.S.C.A. § 401) or employe stock ownership plan, with one or more of the following attributes:

(A) The amount of earnings on contributions (or allocations of contributions or earnings) and amount of benefits are determined with regard to the current or accumulated profits or losses of the employer.

(B) The employer can contribute only in those years when it has current or accumulated profits.

(C) The employer's contributions can fluctuate depending on the level of its profits.

(D) The employer's contributions are made out of current or accumulated profits.

(E) Distributions are paid with respect to stock of a corporation which is held by an employee stock ownership plan.

(v) Any plan under which the accrued benefit payable to each vested participant who does not die before the payment starting date is neither paid nor payable in the form of a qualified annuity.

(vi) Any limited plan of termination.

* * *

§ 101.6. Compensation.

(a) Compensation includes items of remuneration received [by an employe], directly or through an agent, in cash or in property, based on payroll periods or piecework, for services rendered as an employe, agent or officer of an individual, partnership, [but not guaranteed payments to a partner for services rendered to the partnership,] business or nonprofit corporation, or government agency. These items include salaries, wages, commissions, bonuses, stock options, incentive payments, fees, tips, dismissal, termination or severance payments, early retirement incentive payments and other additional compensation contingent upon retirement, including payments in excess of the scheduled or customary salaries provided for those who are not terminating service, rewards, vacation and holiday pay, paid leaves of absence, payments for unused vacation or sick leave, tax assumed by the employer, signing bonuses, amounts received under employe benefit plans and deferred compensation arrangements, and other remuneration received for services rendered.

* * *

(c) Compensation does not mean or include any of the following:

* * *

(3) [Payments commonly recognized as] Federal old age [or retirement benefits paid to persons retired from service after reaching a specified age or after a stated period of employment] insurance benefits payable under 42 U.S.C.S. § 401 et seq., Railroad Retirement Act benefits payable under 45 U.S.C.S §§ 228 or 231 et seq. or any retired or retainer pay of a member or former member of a uniformed service computed under 10 U.S.C.S. § 1401. [Retirement pay includes a distribution of a lump sum upon retirement, but does not include a severance payment by an employer to an employe who terminates employment without retiring. A payment of the latter type shall be considered compensation, if paid upon termination of employment, rather than as a retirement income, to the extent that the payment exceeds the employe's contribution to any plan out of which the payment may be made.]

* * *

(9) Guaranteed payments to a partner for services rendered to the partnership.

* * *

(e) For purposes of this section:

(1) A person who separated from service before satisfying superannuation requirements shall be deemed to be retired from service upon reaching retirement age, regardless of whether he has permanently and wholly withdrawn from active working life or not.

(2) The voluntary discontinuance of a plan within three years after it has taken effect, for any reason other than business necessity, will be evidence that such plan was temporary and limited.

01/12/00

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 15-413
SUBJECT: Termination Pay, Severance Pay and Early Retirement Incentive Programs
AGENCY: DEPARTMENT OF REVENUE

2000 MAY -3 AM 11:13

INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

- X Proposed Regulation
Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
5/3/00	<u>P. Macout</u>	HOUSE COMMITTEE ON FINANCE
5/3/00	<u>A. Burns</u>	SENATE COMMITTEE ON FINANCE
5/3/00	<u>Jessica Villanueva</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
5/3/00	<u>C. Lee</u>	LEGISLATIVE REFERENCE BUREAU

April 14, 2000